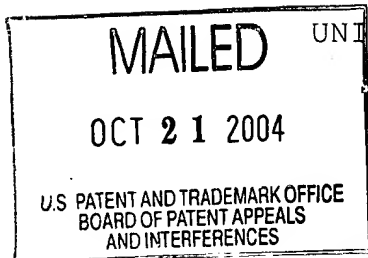


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 16



UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WADE C. KLOSTERMAN

Appeal No. 2004-2065
Application No. 09/613,514

ON BRIEF

Before KIMLIN, DIXON and TIMM, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 15-17. The examiner has withdrawn the rejection of claims 1-11 and 18, and claims 12-14 "are withdrawn from consideration on appeal" (page 4 of Brief dated January 21, 2003, third paragraph).

Claim 15 is illustrative:

15. A timing device for timing discrete periods of time, the device comprising:

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at least one timer operable to measure the passing of a particular period of time without reference to an actual time of a day, with the length of the particular period of time being setable and the setability being limited to multiples of one or more discrete time units;

at least one input device operable to allow for setting the length of the particular period of time, wherein measurement of the particular period of time is initiated automatically following setting of the particular period of time;

a controller operable to provide feedback signals relating to the operation of and operative mode of the timing device, and further operable to produce an alarm signal; and

at least one speaker operable to communicate the feedback signals and the alarm signal.

The examiner relies upon the following reference in the rejection of the appealed claims:

Robertsen

4,690,566

Sep. 1, 1987

Appellant's claimed invention is directed to a timing device that measures the passing of a predetermined period of time without reference to the actual time of day. The timing device comprises a speaker for communicating an alarm signal that indicates the passing of the desired period of time.

Appealed claim 15 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Robertsen. Claims 16 and 17 stand

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rejected under 35 U.S.C. § 103(a) as being unpatentable over Robertsen.

We have thoroughly reviewed the respective positions advanced by appellant and the examiner. In so doing, we find that the examiner's rejections are well-founded. Accordingly, we will sustain the examiner's rejections for essentially those reasons expressed in the Answer, and we add the following primarily for emphasis.

Appellant does not dispute the examiner's factual finding that Robertsen, like appellant, discloses a timing device for timing desired periods of time without reference to the time of day, with the "measurement of the period of time being initiated automatically following setting of the timer (col. 4, lines 1-21), controller being gate 12 and the latch providing feedback signals relating to operation of the timer . . ." (page 4 of Answer, first paragraph). For the claimed speaker, the examiner cites Robertsen's crystal audio transducer which provides an audible "beep" (column 4, lines 51-52).

Appellant's principal argument with respect to the § 102 rejection is that a crystal audio transducer is simply a noise maker, and that a speaker as presently claimed "is a much more complex type of audio transducer having a much greater range and

ability" (page 22 of Supplemental Appeal Brief, last paragraph). Appellant concludes that "Robertsen does not disclose a speaker, but rather a crystal audio transducer, and therefore the invention is not shown identically as claimed and is structurally distinguishable from Robertsen, and therefore the requirements of 35 U.S.C. § 102(b) have not been met" (page 23 of Supplemental Appeal Brief, first paragraph).

We fully concur with the examiner that appellant's broadly claimed "speaker" is not patentably distinguishable from the audio transducer disclosed by Robertsen. The examiner relies upon a dictionary definition of "loudspeaker," another term for speaker, i.e., "a device that converts electric signals to audio sound," and concludes that "the crystal audio transducer of Robertsen is a specific type of audio transducer or 'speaker' as claimed in claim 15" (page 5 of Answer, first paragraph). Appellant has not refuted the dictionary definition that the examiner attributes to the term "speaker," nor has appellant proffered any evidence that one of ordinary skill in the art would not consider a crystal audio transducer to fall within the broad definition of "speaker." Also, appellant has not rebutted the examiner's position that "[a]ppellant's specification fails to suggest any particular structure of the speaker which might

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exclude the crystal audio transducer of Robertsen" (id.). Consequently, we find that the examiner has made out a prima facie case that the claimed speaker is described in Robertsen and, furthermore, that the subject matter defined by claim 15 on appeal is described by Robertsen within the meaning of § 102.

Appellant does not offer any additional argument for the examiner's separate § 103 rejection of claims 16 and 17, which depend upon claim 15.

Appellant also maintains that the examiner improperly reopened prosecution and that, therefore, the rejection should be invalidated and set aside. However, the examiner's action reopening prosecution was authorized and signed by the Supervisory Patent Examiner, and any impropriety alleged by appellant should have been in the form of a petition to the Director. The propriety of the examiner's reopening of prosecution is outside the scope of our review.

In conclusion, based on the foregoing, the examiner's decision rejecting the appealed claims is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

Edward C Kimlin
EDWARD C. KIMLIN
Administrative Patent Judge


JOSEPH L. DIXON
Administrative Patent Judge

BOARD OF PATENT
APPEALS AND
INTERFERENCES


CATHERINE TIMM
Administrative Patent Judge

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